



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,303	09/30/2003	David A. Dalessandro	ETH5093	4099

27777 7590 06/06/2006

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

POUS, NATALIE R

ART UNIT	PAPER NUMBER
----------	--------------

3731

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,303

Applicant(s)

DALESSANDRO ET AL.

Examiner

Natalie Pous

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/4/05, 9/30/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The word "invention" and "means for" language should be avoided in the abstract. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Francis et al. (US 5752965).

Regarding Claim 1, Francis teaches an apparatus (10) for equipping a surgical stapling device (48) to provide reinforced surgical fastener suture lines (Column 1, proximate lines 32-35), comprising:

an alignment means (18) comprising a substantially planar frame, said frame comprising:

a first surface (28) comprising a first guide channel wall (24) extending therefrom, and a second surface (30) apposed to said first surface and comprising a second guide channel wall extending therefrom (26); and a receiving means (20) comprising first and second apposed surfaces, said first guide channel wall and said first surface of said receiving means defining a first guide channel (defined by wall 24) and said second guide channel wall and said second surface said receiving means defining a second guide channel (defined by wall 26), a first elastomeric foam surgical buttress (12) comprising a first surface for contacting said receiving means and a second surface apposed to said first surface for contacting said stapling device, said first buttress disposed within said first guide channel and on said first surface of said receiving means (fig. 2b), a second elastomeric foam surgical buttress (14) comprising a first surface for contacting said receiving means and a second surface apposed to said first surface for contacting said stapling device, said second buttress disposed within said second guide channel and on said second surface of said receiving means (fig. 2b); and means for retaining said first and second buttresses on said first and second surfaces of said receiving means (42, 44).

Regarding Claim 4, Francis teaches the apparatus of claim 1, further comprising an adhesive (16) disposed upon said second surface of said first and second foam buttresses to provide releasable attachment of said foam buttresses to said surgical

stapling device upon contact therewith (Column 10 and 11, proximate lines 60-68 and 1-20 respectively).

Regarding Claim 5, Francis teaches the apparatus of claim 4, wherein the adhesive is biocompatible (Column 11, proximate lines 20-25)

Regarding Claim 6, Francis teaches the apparatus of claim 5, wherein the adhesive is biodegradable (it is noted that a preferred adhesive material is cellulose which is inherently biodegradable)

Regarding Claim 7, Frances teaches the apparatus of claim 1 wherein said retaining means comprises a retention channel (42, 44) integral with and between said first and second guide channel walls and said receiving means for cooperating with said foam buttresses to provide retention of said foam buttresses on said receiving means prior to contact with said stapling device.

Regarding Claim 8, Francis teaches the apparatus of claim 7 wherein said first and second foam buttresses further comprise means for cooperating with said retention channels to provide releasable retention of said buttresses on said receiving means prior to contact with said stapling device (Column 13, proximate lines 7-31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francis in view of Hamilton et al. (US 6325810). Francis teaches all limitations of preceding dependent claim 1, but fails to disclose wherein the buttress comprises an aliphatic polyester from the listed group of materials. Hamilton teaches a buttress for a surgical stapler wherein the elastomer is based on aliphatic polyester consisting of a group including: elastomeric copolymers of epsilon-caprolactone and glycolide, elastomeric copolymers of epsilon-caprolactone and lactide, elastomeric copolymers of p-dioxanone, etc. in order to provide a material that is compliant and pliable so that the foam may distribute the compressive load and compensate for variations in tissue thickness, thereby acting as an effective gasket for hemostasis and pneumostasis. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Francis with the materials of Hamilton in order to provide a material that is compliant and pliable so that the foam may distribute the compressive load and compensate for variations in tissue thickness, thereby acting as an effective gasket for hemostasis and pneumostasis.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francis in view of Palacios et al. (US 6939358). Francis teaches all limitations of preceding dependent claims 1, 7 and 8, but fails to disclose trapezoidal tabs integral with and extending laterally from said buttresses. Palacios teaches a buttress for a surgical stapler wherein the buttress comprises trapezoidal tabs (10) to aid in retention of the buttress within the receiving means (2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Francis with tabs of Palacios to aid in retention of the buttress within the receiving means.

Claims 11 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Francis as a matter of design choice. Francis teaches all limitations of preceding dependent claim 1, but fails to disclose a biodegradable adhesive between the receiving means and the first surface of the first and second foam buttresses. Francis does however teach inner portion (20) to aid in retaining buttresses within the retaining means. It would have been an obvious matter of design choice to provide the surface of portion 20 with a biodegradable adhesive since applicant has not disclosed that an adhesive provides an advantage over the foam pad of Francis, and it appears that the device of Francis performs the task of retaining the buttress in the receiving means equally well as that disclosed in the application.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-

6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NRP
5/19/06



(JACKIE) TAN-UYEN HO
PRIMARY EXAMINER
5/30/06